REMARKS

Claims 1-23 are pending. Claims 1 and 13 are rejected; claims 14-23 are allowed, and at least claims 3-12 are objected to. The status of claim 2 is unclear to Applicants. Claim 2 was listed as being objected to on form PTOL-326 but is not addressed in the office action (See page 4 where it states that only claims 3-12 are objected to.) Furthermore, Examiner's arguments appear to imply that claim 2 is rejected.

If the claims are not allowed in response to this office action, Applicants request the Examiner to more clearly point out the status of claim 2.

The Office Action contains statements characterizing the claims, the specification, or the prior art. Regardless of whether such statements are addressed by Applicants, Applicants refuse to subscribe to any of these statements, unless expressly indicated by Applicants.

Claims Rejections

Claims 1 and 13 are patentable under 35 U.S.C. 103(a) over Musolfet (2004/0180465).

Applicants respectfully submit claims 1 and 13 are patentable under 35 U.S.C. 103(a) over Musolfet because Musolfet fails to teach or suggest all features of at least independent claim1, from which claim 13 (and 2) depend(s). More specifically, Musolfet fails to teach or suggest "forming an insulating layer over the layer at approximately atmospheric pressure to seal the opening."

The Examiner contends, "Musolf [stet] et al. do not specifically disclose forming the insulating layer at approximately atmospheric pressure." (Page 2 of the Office Action.) Applicants wish to point out that claim 1 does not state "forming an insulating layer over the layer at approximately atmospheric pressure." Instead, claim 1 states, "forming an insulating layer over the layer at approximately atmospheric pressure *to seal the opening*" (*emphasis added).* Musolfet fails to teach or suggest, "forming an insulating layer...to seal the opening." Instead, Musolfet fills the opening(s). In FIG. 2c, Musolfet fills the openings that are between the patterned portions of the layer 135. Therefore, Musolfet fails to teach or suggest sealing an opening and thus, fails to teach or suggest, "forming an insulating layer...to seal the opening."

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Furthermore, the Examiner contends, "One skilled in the art would have been led to the recited pressure through routine experimentation to achieve a desired rate of deposition. In addition, the selection of pressure, its [stet] obvious because it is a matter of determining optimum process conditions by routine experimentation..." (Pages 2-3 of the Office Action.) However, the forming of the insulating layer at approximately atmospheric pressure is not an optimization of the deposition process and thus is not done to achieve a desired rate of deposition. (See paragraphs 45, 46, 47, and 49 of Applicants' specification.) Therefore, one skilled in the art would not be lead to the recited pressure through routine experimentation. Because the reasoning behind the case law the Examiner cites in the Office Action (i.e., optimization of the process) does not apply, the conclusions (i.e., obviousness) of the case law also do not apply.

In addition, at least some of the case law sited by the Examiner is not being properly applied for another reason. Mores specifically, the Examiner is misinterpreting the case law. For example, in *In re Woodruff*, 919F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990) Woodruff claimed 3-25% by volume of carbon monoxide in one claim and greater than 5-25% by volume of carbon monoxide in another claim. The prior art (McGill) taught 1-5% by volume of carbon monoxide. The court found Woodruff's claims to be obvious over McGill, because "The law is replete with cases in which the difference between the claimed invention and the prior art is some range or other variable within the claims....In such a situation, the applicant must show that the particular range is critical, generally by showing that the claimed range achieves unexpected results *relative to the prior art range*." Therefore, prior art is properly applied if the prior art teaches a range or variable and the difference is that the application claims a different range or variable. The prior art cannot be properly applied using *In re Woodruff*, since it is silent as to *any range* of a feature, especially a feature not taught by Musolfet.

For at least the above reasons, claim 1 and dependent claim 13 (and the others) are patentable over Musolfet under 35 U.S.C. 103(a).

Applicants thank the Examiner for pointing out allowable subject matter, but currently believe all pending claims are patentable and therefore earnestly solicit allowance of all pending

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claims. Please contact Applicant's practitioner listed below if there are any issues that can be resolved via telephone.

Respectfully submitted,

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